

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

Federal-State Joint Board on Universal
Service

American Cellular Corporation Petition for
Agreement with Redefinition of the Service
Area of a Rural Incumbent Local Exchange
Carrier in the Commonwealth of Kentucky
Pursuant to 47 C.F.R. § 54.207(c)

CC Docket No. 96-45

**AMERICAN CELLULAR CORPORATION
PETITION FOR AGREEMENT WITH REDEFINITION OF THE SERVICE AREA
OF A RURAL INCUMBENT LOCAL EXCHANGE CARRIER
IN THE COMMONWEALTH OF KENTUCKY**

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SUMMARY

American Cellular Corporation (“ACC”) respectfully requests the Commission’s concurrence with the Kentucky Public Service Commission’s (“Kentucky PSC”) redefinition of the service area requirement in a single study area in connection with its grant of eligible telecommunications carrier (“ETC”) status to ACC.

ACC filed its verified petition for designation as a competitive federal ETC with the Kentucky PSC on March 29, 2005.¹ No party intervened or opposed ACC’s petition. On August 15, 2005, the Kentucky PSC granted ACC’s unopposed petition and designated the Company as a competitive ETC throughout substantially all of its commercial mobile radio services (“CMRS”) licensed service area.² Finding that ACC’s FCC-licensed service area does not encompass the entire Kentucky Alltel – London study area (SAC 269691) the Kentucky PSC further determined to redefine the service area requirement from the study area to the individual wire center level to facilitate ACC’s designation in this area.³

ACC subsequently petitioned the Kentucky PSC for rehearing or clarification of certain limited findings and conclusions set forth in the *ACC Kentucky Order*.⁴ Specifically, because the

¹ *American Cellular Corporation Petition for Designation as a Competitive Eligible Telecommunications Carrier Pursuant to Section 214(e) of the Telecommunications Act of 1996*, Case No. 2005-00130, *Verified Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky* (Mar. 29, 2005) (attached hereto as “**Exhibit A**”).

² *Petition of American Cellular Corporation Petition for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e) of the Telecommunications Act*, Case No. 2005-00130, *Order* (Aug. 15, 2005) (“*ACC Kentucky Order*”) (attached hereto as “**Exhibit B**”).

³ *Id.* at pp. 5-6.

⁴ *American Cellular Corporation Petition for Designation as a Competitive Eligible Telecommunications Carrier Pursuant to Section 214(e) of the Telecommunications Act of 1996*,

ACC Kentucky Order did not initially include the findings required under 47 C.F.R. § 54.207(c) for purposes of this Commission’s review, ACC requested that the Kentucky PSC amend the *ACC Kentucky Order* to set forth its findings and conclusions with respect to each of the Joint Board on Universal Service (“Joint Board”) recommendations.⁵ The Kentucky PSC issued the requested clarification on September 21, 2005.⁶

As demonstrated below, the Kentucky PSC’s proposed service area redefinition is consistent with federal law and the Commission’s regulations and decisions. Moreover, redefinition is necessary to further the universal service goals of the Telecommunications Act of 1996 (the “Act”). Accordingly, ACC respectfully requests that the Commission approve the Kentucky PSC’s service area redefinition pursuant to 47 C.F.R. § 54.207(c).

Case No. 2003-00130, *American Cellular Corporation’s Petition for Rehearing or Clarification* (Sept. 6, 2005) (“*Petition for Clarification*”) (attached hereto as “**Exhibit C**”).

⁵ *Id.* at p. 1.

⁶ *Petition of American Cellular Corporation for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e) of the Telecommunications Act*, Case No. 2005-00130, *Order* (Sept. 21, 2005) (“*Clarification Order*”) (attached hereto as “**Exhibit D**”).

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**AMERICAN CELLULAR CORPORATION
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OF A RURAL INCUMBENT LOCAL EXCHANGE CARRIER
IN THE COMMONWEALTH OF KENTUCKY**

American Cellular Corporation (“ACC”) respectfully requests the Commission’s concurrence, pursuant to 47 C.F.R. § 54.207(c), with the Kentucky Public Service Commission’s (“Kentucky PSC”) redefinition of the service area requirement in a single study area in connection with its grant of eligible telecommunications carrier (“ETC”) status to ACC. As demonstrated in this Petition, the Kentucky PSC’s service area redefinition is consistent with federal law and the Commission’s regulations and decisions. Accordingly, the public interest will be served by the Commission’s prompt concurrence.

I. BACKGROUND

A carrier designated as a competitive ETC pursuant to Section 214(e) of the Telecommunications Act of 1996 (the “Act”) is required to provide and advertise certain specified services throughout the “service area” for which it has been designated.¹ The term

¹ 47 U.S.C. § 214(e)(1).

“service area” means a geographic area established by a State commission (or the Commission under Section 214(e)(6) of the Act)) for the purpose of determining universal service obligations and support mechanisms.² In an area served by a rural ILEC, a competitive ETC’s service area is defined as the rural ILEC’s “study area,” unless and until the Commission and the State commission both agree to redefine the service area requirement to something other than the study area.³

The Commission has long recognized that requiring a competitive carrier, especially a wireless provider, to conform its designated ETC service area to the study area of a rural ILEC may give the ILEC an unfair competitive advantage.⁴ The Commission promulgated 47 C.F.R. § 54.207 to avoid such anti-competitive results. Pursuant to Section 54.207, a State commission may grant ETC designations for a service area that differs from the rural ILEC’s study area.⁵ Such designations, however, are not effective until this Commission concurs with the State commission’s proposed redefinition.⁶

In granting such designations, the State commission and this Commission are required to consider the Joint Board’s recommendations and explain their rationale for adopting the

² 47 U.S.C. § 214(e)(5).

³ 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b); *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶ 172 n. 434 (1997) (“*Universal Service First Report and Order*”), *subsequent history omitted*.

⁴ *Universal Service First Report and Order*, ¶ 185.

⁵ *Id.*

⁶ *Id.*

alternative service area.⁷ In recommending that the study area be retained as the presumptive service area for a rural ILEC, the Joint Board identified the following three factors which must be considered when weighing a request to redefine the service area requirement to something other than the study area: (1) minimizing cream skimming; (2) recognizing that the 1996 Act places rural telephone companies on a different competitive footing from other LECs; and (3) recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than a study area level.⁸ As explained below, the Kentucky PSC considered the three Joint Board factors and concluded that granting the proposed redefinition is consistent with each of these factors.

On August 15, 2005, the Kentucky PSC issued an order designating ACC as a competitive ETC and granting redefinition of the Kentucky Alltel – London study area (SAC 269691).⁹ ACC subsequently petitioned the Kentucky PSC for rehearing or clarification and requested that the Kentucky PSC amend the *ACC Kentucky Order* to set forth its specific findings and conclusions regarding the three Joint Board factors.¹⁰ The Kentucky PSC issued the requested clarification on September 21, 2005.¹¹

⁷ 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b); *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, CC Docket No. 96-45, *Memorandum Opinion and Order*, 19 FCC Rcd 1563, ¶ 9 (2004) (“*Virginia Cellular*”).

⁸ *Virginia Cellular*, ¶ 41 (citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Recommended Decision*, 12 FCC Rcd 87, 179-80, ¶¶ 172-74 (1996) (“*Joint Board Recommendations*”)).

⁹ *Petition of American Cellular Corporation Petition for Designation as an Eligible Telecommunication Carrier Pursuant to Section 214(e) of the Telecommunications Act*, Case No. 2005-00130, *Order* (August 15, 2005) (“*ACC Kentucky Order*”).

¹⁰ *American Cellular Corporation Petition for Designation as a Competitive Eligible Telecommunications Carrier Pursuant to Section 214(e) of the Telecommunications Act of 1996*,

In the *ACC Kentucky Order*, the Kentucky PSC concluded that ACC was fully qualified to be designated as a competitive ETC and that its designation in areas served by rural ILECs was in the public interest.¹² To effectuate ACC’s ETC designation in the Company’s FCC-licensed portions of the Kentucky Alltel – London study area, the Kentucky PSC further determined that the service area requirement should be redefined to the wire center level in that study area and directed ACC to seek the Commission’s concurrence with the proposed service area redefinition.¹³

Set forth below is a list of the wire centers in which ACC was designated as a competitive ETC by the Kentucky PSC subject to the Commission’s concurrence with the proposed redefinition:

Company Name	Wire Center CILLI Code
Kentucky Alltel, Inc. – London (SAC 269691)	AGSTKYXA
	BKVLKYXA
	BRHDKYXA
	DOVRKYXA
	EBNKKYXA
	EBRNKYXA
	FBSHKYXA
	FRNLKYXA
	GMTWKYXA
	JHVLKYXA
	LONDKYXA

Case No. 2003-00130, *American Cellular Corporation’s Petition for Rehearing or Clarification* (Sept. 6, 2005) (“*Petition for Clarification*”).

¹¹ *Petition of American Cellular Corporation for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e) of the Telecommunications Act*, Case No. 2005-00130, *Order* (Sept. 21, 2005) (“*Clarification Order*”).

¹² *ACC Kentucky Order*, pp. 4-5.

¹³ *ACC Kentucky Order*, pp. 5-7.

Company Name	Wire Center CILLI Code
	LVTNKYXA
	LWGMKYXA
	MTOLKYXA
	MTVRKYXA
	MYLCKYXA
	SCHLKYXA
	SOVLKYXA
	WASHKYXA
	WHLLKYXA

This Commission has held that a State commission’s “first-hand knowledge of the rural areas in question uniquely qualifies it to examine the redefinition proposal and determine whether it should be approved.”¹⁴ The Kentucky PSC’s first-hand knowledge of the circumstances of Kentucky rural ILECs and other carriers should thus be given significant weight as the Commission addresses the service area redefinition request made herein.

II. DISCUSSION

A. **Redefinition of the Service Area Requirement is Consistent with Federal Universal Service Policy**

Congress declared its intent in passing the 1996 amendments to the Act:

To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.¹⁵

Consistent with these goals, the Act specifically contemplates the designation of multiple ETCs, including in areas served by rural ILECs, as being consistent with the public interest. 47 U.S.C. § 214(e)(2). The Commission has long recognized that requiring a competitive carrier,

¹⁴ *Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, *Memorandum Opinion and Order*, 19 FCC Rcd. 6422, 6423, ¶ 2 (rel. Apr. 12, 2004) (“*Highland Cellular*”).

¹⁵ Pub. L. No. 104-104, 110 Stat. 56 (1996) (emphasis added).

especially a wireless provider, to conform its designated service area to the study area of a rural ILEC may act to bar the new telecommunications provider from entering the market, and thus give the ILEC an unfair competitive advantage.¹⁶

That is particularly true in this instance because portions of the Kentucky Alltel - London study area lie outside of ACC's FCC-licensed CMRS boundaries. The proposed redefinition is consistent with federal universal service policy as it will promote local competition and enable ACC to bring new services and technologies to customers in rural and high-cost portions of Kentucky who currently have little or no meaningful choice of universal service providers.¹⁷

Federal universal service policy also favors redefinition in instances where a rural ILEC's study area is large or non-contiguous. The Commission expressly urged State commissions to explore redefinition for purposes of ETC designation where a competitive ETC or wireless carrier might not be able to provide facilities-based service throughout a rural ILEC's entire study area.¹⁸ Accordingly, the Commission cautioned that requiring a new entrant to serve a large or non-contiguous service area as a prerequisite to ETC designation would impose a "serious barrier to entry, particularly for wireless carriers" and would be "particularly harmful to

¹⁶ *Universal Service First Report and Order*, ¶ 185.

¹⁷ *Virginia Cellular*, ¶¶ 40-45; *Highland Cellular*, ¶¶ 37-42; see also *Washington Utilities & Transportation Commission, et al., Petition for Agreement With Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of Study Areas of the Purpose of Distributing Portable Federal Universal Service Support*, CC Docket No. 96-45, *Memorandum Opinion and Order*, 15 FCC Rcd 9921, ¶ 8 (Com. Car. Bur. 1999).

¹⁸ *Universal Service First Report and Order*, ¶ 190.

competition in rural areas, where wireless carriers could potentially offer service at much lower costs than traditional wireline service.”¹⁹

The proposed redefinition in this proceeding will promote competition in the Kentucky Alltel – London study area by offering customers within ACC’s FCC-licensed service areas a choice in universal service providers. This effort at facilitating competition is consistent with the goals of the Act and this Commission.²⁰

Moreover, the Kentucky PSC has employed its unique position and expertise in analyzing the telecommunications market in Kentucky and determined that redefinition of the service area requirement for purposes of ACC’s ETC designation will benefit Kentucky consumers and will not harm Kentucky rural ILECs.²¹ Accordingly, the Commission should concur with the Kentucky PSC’s redefinition determination in this proceeding without delay.

B. Redefinition In This Case Satisfies The Three Joint Board’s Factors

As noted above, the Commission has adopted the three Joint Board factors which should be considered when weighing a request for service area redefinition.²² The Commission recently reiterated its adherence to these three factors in the March 17, 2005 *ETC Criteria Order*.²³ The Kentucky PSC properly considered each of these factors and correctly determined that

¹⁹ *Id.*

²⁰ *See Virginia Cellular*, ¶ 38.

²¹ *ACC Kentucky Order*, pp. 4-6; *Clarification Order*, pp. 2-4.

²² *See, e.g., Highland Cellular*, ¶¶ 38-41 (applying Joint Board’s recommended factors).

²³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, 20 FCC Rcd. 6371, 6403, ¶¶ 73-75 (2005) (“*ETC Criteria Order*”).

redefinition of the service area requirement to the wire center level in this instance is consistent with these factors.²⁴

1. Redefinition will not Result in Creamskimming

The first factor to consider is whether an ETC applicant is selectively seeking designation in only the low-cost, high-support portion of a rural ILEC's study area, a process known as "creamskimming." The Commission has noted that if a competitor were required to serve a rural ILEC's entire study area, the risk of "creamskimming" would be eliminated because a competitive ETC would be prevented from selectively targeting service only to the lowest cost exchanges of the rural ILEC's study area.²⁵ As the Joint Board explained:

We note that some commenters argue that Congress presumptively retained study areas as the service area for rural telephone companies in order to minimize "cream skimming" by potential competitors. Potential "cream skimming" is minimized because competitors, as a condition of eligibility, must provide services throughout the rural telephone company's study area. Competitors would thus not be eligible for universal service support if they sought to serve only the lowest cost portions of a rural telephone company's study area.²⁶

In this case, the Kentucky PSC's determination to redefine the service area requirement expressly took into account any creamskiimming concerns. The Kentucky PSC reviewed the record before it and concluded "ACC is not intentionally creamskiimming. ACC seeks to be designated within its entire FCC-licensed service area. It has not picked only certain areas within its licensed service area."²⁷ Accordingly, the Kentucky PSC found no evidence of

²⁴ *Clarification Order*, pp. 2-4.

²⁵ *Universal Service Order*, 12 FCC Rcd at 8881-82.

²⁶ *Joint Board Recommendations*, ¶ 172.

²⁷ *Clarification Order*, p. 2.

intentional creamskimming. The Kentucky PSC further concluded that no effects of unintentional creamskimming would result from the proposed redefinition:

The risk of unintentional creamskimming has been virtually eliminated by the FCC's implementation of the disaggregation mechanisms set forth in 47 C.F.R. § 54.315. Rural telephone companies have the option to disaggregate federal universal service support to higher cost portions of their study areas. Kentucky Alltel has elected to forgo disaggregation within its study area.²⁸

Moreover, ACC conducted a population density analysis, as endorsed by this Commission, to assess the risk of unintended creamskimming.²⁹ Upon reviewing ACC's population density analysis – showing a population of 57.94 persons per square mile in the areas in which ACC sought ETC designation and a population of 50.49 persons per square mile in the areas in which ACC did not seek ETC designation – the Kentucky PSC concluded that “[t]he difference in these two results does not present any risk of unintentional creamskimming.”³⁰

Thus, as the Kentucky PSC concluded, the proposed redefinition will not result in creamskimming.

2. Redefinition does not Affect the Unique Regulatory Status of Rural ILECs

The second factor to consider is the impact on the rural ILEC whose service area is to be redefined.³¹ The Kentucky PSC's determination to redefine the service area requirement in this proceeding will not affect the unique regulatory status of the rural ILEC. As the Commission concluded in *Virginia Cellular*:

²⁸ *Id.*

²⁹ *Petition for Clarification*, pp. 5-7.

³⁰ *Id.*

³¹ Importantly, it should be noted that no rural ILEC objected to ACC's petition before the Kentucky PSC, nor did any rural ILEC choose to intervene in the state proceeding.

[O]ur decision to redefine the service areas of the affected rural telephone companies includes special consideration for the affected rural carriers. Nothing in the record convinces us that the proposed redefinition will harm the incumbent rural carriers. The high-cost universal service mechanisms support all lines served by ETCs in rural areas. Under the Commission's rules, receipt of high-cost support by Virginia Cellular will not affect the total amount of high-cost support that the incumbent rural telephone company receives. Therefore, to the extent that Virginia Cellular or any future competitive ETC captures incumbent rural telephone company lines, provides new lines to currently unserved customers, or provides second lines to existing wireline subscribers, it will have no impact on the amount of universal service support available to the incumbent rural telephone companies for those lines they continue to serve. Similarly, redefining the service areas of the affected rural telephone companies will not change the amount of universal service support that is available to these incumbents.³²

Nothing in the service area redefinition process affects a rural ILEC's statutory exemptions from interconnection, unbundling and resale requirements under Section 251(c) of the Act. Further, redefining the rural ILEC's service area as requested herein will not compromise or impair the incumbent's unique regulatory treatment under Section 251(f) of the Act. Even after the service area requirement is redefined for purposes of designating ACC as a competitive ETC, the rural ILEC will still retain the statutory exemptions from interconnection, unbundling and resale requirements under Section 251(c).

Additionally, the redefinition process does not affect the way in which a rural ILEC calculates its embedded costs or the amount of per-line support it receives. "Under the Commission's rules, receipt of high-cost support by [a competitive ETC] will not affect the total amount of high-cost support that the incumbent rural telephone company receives."³³ Rather, the redefinition process only modifies the service area requirement for purposes of designating a

³² *Virginia Cellular*, ¶ 43 (internal footnotes omitted).

³³ *Virginia Cellular*, ¶ 43; *see also Highland Cellular*, ¶ 40.

competitive ETC. Thus, the incumbent will retain its unique regulatory status as a rural ILEC under the Act consistent with the Joint Board's recommendations.

Consistent with this analysis, the Kentucky PSC determined that the proposed redefinition would not affect Kentucky Alltel – London's unique regulatory status.³⁴ Accordingly, the Commission's concurrence with the Kentucky PSC's proposed redefinition will have no effect on the unique regulatory status enjoyed by this rural ILEC.

3. Redefinition Does Not Create Any Administrative Burdens

The third and final factor to consider is whether any administrative burdens may result from the redefinition of the service area requirement. A rural ILEC's universal service support payments are currently based on the company's embedded costs determined at the study area level.³⁵ As the FCC concluded in *Virginia Cellular*:

[R]edefining the rural telephone company service areas as proposed will not require the rural telephone companies to determine their costs on a basis other than the study area level. Rather, the redefinition merely enables competitive ETCs to serve areas that are smaller than the entire ILEC study area. Our decision to redefine the service areas does not modify the existing rules applicable to rural telephone companies for calculating costs on a study area basis, nor, as a practical matter, the manner in which they will comply with these rules. Therefore, we find that the concern of the Joint Board that redefining rural service areas would impose additional administrative burdens on affected rural telephone companies is not at issue here.³⁶

For the same reasons, redefinition of the service area requirement in this case will not impose any administrative burdens on the rural ILEC. The Kentucky PSC expressly noted that "redefinition of the study area does not affect the calculation of support or create any additional

³⁴ *Clarification Order*, p. 3.

³⁵ *Universal Service First Report and Order*, ¶ 189.

³⁶ *Virginia Cellular*, ¶ 44.

III. CONCLUSION

AMERICAN CELLULAR CORPORATION

ATTORNEYS FOR AMERICAN CELLULAR
CORPORATION

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Exhibit A

**American Cellular Corporation's March 29, 2005
Verified Petition for Designation as an Eligible Telecommunications
Carrier in the Commonwealth of Kentucky**

**COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION**

In the matter of:

AMERICAN CELLULAR CORPORATION
petition for designation as a competitive
eligible telecommunications carrier pursuant
to Section 214(e) of the Telecommunications
Act of 1996

Case No. 2005-00130

RECEIVED
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COMMISSION

**VERIFIED PETITION FOR DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER IN
THE COMMONWEALTH OF KENTUCKY**

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I. INTRODUCTION

1. American Cellular Corporation (“ACC”), submits this Petition for designation as an eligible telecommunications carrier (“ETC”) pursuant to 807 KAR 5:001, Section 8, 47 U.S.C. § 214(e) of the Communications Act of 1996 (the “Act”), 47 U.S.C. § 151, *et. seq.*, and Part 54 of the Federal Communications Commission’s (“FCC”) rules and regulations governing universal service (“FCC Rules”).

2. ACC seeks designation as a competitive ETC for purposes of qualifying to receive federal universal service support in the non-rural telephone company wire centers and rural telephone company study areas set forth on the attached **Exhibit A**.

3. Upon designation as a competitive federal ETC, ACC will undertake to offer and advertise the services and functionalities supported by the federal universal service support mechanisms, set forth in 47 C.F.R. § 54.101(a)(1)-(a)(9) (the “Supported Services”), throughout the areas in which ACC is designated as a competitive ETC (“ETC Service Areas”). A map depicting ACC’s FCC-licensed service areas in Kentucky and the incumbent telephone companies’ wire center boundaries is attached as **Exhibit B**.

4. As demonstrated below, ACC meets all of the statutory and regulatory prerequisites for designation as a competitive federal ETC throughout its requested ETC Service Areas. The Commission should, therefore, grant ACC’s Petition without delay.

II. BACKGROUND

5. ACC is an Oklahoma based corporation that maintains its principal place of business at 14201 Wireless Way, Oklahoma City, Oklahoma 73134-2512.

6. ACC is registered to conduct business in the Commonwealth of Kentucky (Organization No. 0576718) and does so under the CellularOne® brand name within its FCC-licensed markets.

7. ACC is licensed by the FCC to provide commercial mobile radio service ("CMRS"). Nationally, ACC provides CMRS in portions of Kentucky, Michigan, Minnesota, New York, Ohio, Oklahoma, Pennsylvania, West Virginia and Wisconsin. As of September 30, 2004, ACC provided service to more than 719,000 subscribers. In August 2003, ACC became a wholly owned subsidiary of Dobson Communications, and the consolidated company now serves 1.6 million wireless subscribers in 16 states. ACC has also been designated by the Wisconsin Public Service Commission to serve as a competitive ETC throughout portions of that state.

8. In Kentucky, ACC is currently licensed to provide CMRS in the following FCC-licensed Rural Service Areas ("RSAs"): RSA 4 – Spencer, RSA 5 – Barren, RSA 6 – Madison and RSA 8 - Mason ("Licensed Service Areas").¹ The telecommunications services provided by ACC in Kentucky include mobile telephony, data, facsimile, 911, voicemail and other features and services.

9. ACC offers digital voice and digital feature services to its customers through its existing Time Division Multiple Access ("TDMA") digital network. In addition, ACC recently upgraded to a Global System for Mobile Communications ("GSM") and General Packet Radio Service ("GPRS") digital network, which enables ACC to offer enhanced data services to its customers.

10. ACC offers its customers high-quality wireless telecommunications services and is committed to providing exceptional customer service as demonstrated by its adoption of the

¹ ACC's FCC-licensed service areas encompass the following counties in Kentucky: RSA 4 - Anderson, Green, Hardin, Larue, Marion, Mercer, Nelson, Spencer, Taylor, Washington; RSA 5 – Adair, Barren, Clinton, Cumberland, Hart, McCreary, Metcalfe, Monroe, Russell, Wayne; RSA 6 – Boyle, Casey, Garrard, Laurel, Lincoln, Madison, Pulaski, Rockcastle; RSA 8 – Bath, Bracken, Fleming, Lewis, Mason, Menifee, Montgomery, Nicholas, Robertson, Rowan. *Public Notice Report No. CL-92-40, Common Carrier Public Mobile Services Information, Cellular MSA/RSA Markets and Counties*, DA 92-109, 7 FCC Rcd 742 (Jan. 24, 1992).

Cellular Telecommunications Industry Association (“CTIA”) Consumer Code for Wireless Service, which sets forth certain principles, disclosures and practices for the provision of wireless services.²

III. JURISDICTION

11. As a CMRS provider, ACC’s provision of wireless telecommunications services is licensed and regulated by the FCC. However, under 47 U.S.C. § 214(e)(2), the Commission has the jurisdiction and authority to designate ACC as an ETC within the Commonwealth of Kentucky.³

IV. FEDERAL CRITERIA FOR ETC DESIGNATION

12. To qualify for ETC designation under 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.201, the Commission must find that ACC meets the following requirements:

- (a) That the Company is a “common carrier” under federal law;
- (b) That the Company offers or will be able to offer the Supported Services using its own facilities, or a combination of its own facilities and resale of another carrier’s services;
- (c) That the Company will advertise the availability and charges for the Supported Services using media of general distribution; and
- (d) That the Company will provide the Supported Services throughout its designated ETC Service Areas upon reasonable request.

13. Section 54.101(a)(1)-(a)(9) of the FCC’s Rules require that an ETC provide the following services or functionalities:

² See www.ctia.org/wireless_consumers/consumer_code/index.cfm.

³ See *In the Matter of Petition of NPCR, Inc. d/b/a Nextel Partners for Designation as an Eligible Telecommunications Carrier in the State of Kentucky*, Case No. 2003-00143, Order (Dec. 16, 2004) (“Nextel Partners Order”).

- (a) voice-grade access to the public switched telephone network;
- (b) local usage;
- (c) dual-tone multi-frequency (“DTMF”) signaling or its functional equivalent;
- (d) single-party service or its functional equivalent;
- (e) access to emergency services;
- (f) access to operator services;
- (g) access to interexchange service;
- (h) access to directory assistance;
- (i) toll limitation for qualifying low-income consumers.

47 C.F.R. § 54.101(a)(1)-(a)(9).

14. The Act and the FCC’s Rules define “service area” as a geographic area established by the Commission for purposes of determining universal service obligations and support. In an area served by an incumbent non-rural telephone company, the Commission may designate a competitive ETC for a service area that is smaller than the contours of the incumbent carrier’s service area.⁴

15. In an area served by an incumbent rural telephone company, “service area” is defined as the incumbent carrier’s entire “study area,” unless and until the Commission and FCC cooperatively redefine the service area requirement to something less than the study area.

47 U.S.C. § 214(e)(5), 47 C.F.R. § 207(b).

16. Consistent with the public interest, convenience, and necessity, a competitive ETC may be designated in any area served by a non-rural telephone company so long as the applicant meets the requirements of 47 U.S.C. § 214(e)(1). Before designating a competitive ETC in an area served by a rural telephone company, the Commission must also find that the designation satisfies the “public interest” requirement set forth in 47 U.S.C. § 214(e)(2).

⁴ *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, *Memorandum Opinion and Order*, FCC 03-338, ¶ 39 n.114 (rel. Jan. 22, 2004) (“*Virginia Cellular Order*”); *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, FCC 97-157, ¶¶ 184-185 (rel. May 8, 1997) (“*Universal Service Order*”).

V. ACC SATISFIES EACH OF THE REQUIREMENTS FOR DESIGNATION AS A COMPETITIVE ELIGIBLE TELECOMMUNICATIONS CARRIER

17. A telecommunications carrier utilizing any technology, including wireless technology, is eligible to be designated as an ETC provided the carrier meets the requirements established under 47 U.S.C. § 214(e)(1). As demonstrated below, ACC satisfies each of these requirements. ACC operates as a common carrier, provides each of the nine Supported Services established by the FCC, and will offer and advertise the availability of, and charges for, such services throughout its designated ETC Service Areas. Finally, ACC's designation as a competitive ETC is consistent with the public interest, convenience, and necessity and, in areas served by a rural telephone company, will serve the public interest.

A. ACC is a Common Carrier

18. The first requirement for ETC designation is that the applicant is a common carrier. 47 U.S.C. § 214(e)(1). A common carrier is defined by the Act as "any person engaged as a common carrier for hire, in interstate or foreign communications by wire or radio" 47 U.S.C. § 153(10). The FCC has determined that wireless telecommunications is a common carrier service. *See* 47 C.F.R. § 20.9(a). Therefore, ACC meets the federal definition of common carrier for purposes of ETC designation.

B. ACC Provides Each of the Nine Supported Services

19. The second requirement for ETC designation is that the applicant be capable of and committed to providing each of the nine Supported Services upon designation. 47 U.S.C. § 214(e)(1)(A). ACC is capable of, and currently does provide, the Supported Services over its existing network infrastructure in Kentucky as follows:

(a) Voice Grade Access: The FCC has determined that voice grade access to the public switched telephone network means the ability to make and receive calls with a

minimum bandwidth of 300 to 3500 Hertz. 47 C.F.R. § 54.101(a)(1). Through its interconnection agreements with various ILECs – specifically including Bellsouth d/b/a/ South Central Bell, Duo County Telephone Coop., Kentucky Alltel, Inc. Highland Telephone Coop, and South Central Rural Telephone Coop. – ACC’s customers are currently able to make and receive calls on the public switched telephone network within the FCC’s specified frequency range.

(b) Local Usage: “Local usage” means an amount of minutes of use of exchange service, as prescribed by the FCC, provided free of charge to end users. 47 C.F.R. § 54.101(a)(2). An ETC must include an amount of free local usage as part of a universal service offering. 47 C.F.R. 54.101(a)(2). Unlimited local usage is not required of any ETC.⁵ The FCC has determined that a wireless carrier’s inclusion of local usage in a variety of service offerings satisfies the obligation to provide local usage.⁶ ACC will include local usage in all of its universal service offerings within ACC’s defined local service areas as part of its monthly service package. In addition, ACC will comply with any specific local usage requirements adopted by the FCC and required of federal ETCs in the future.

(c) Dual Tone Multi-Frequency Signaling or Its Functional Equivalent: “Dual Tone Multi-Frequency” (“DTMF”) is a method of signaling that facilitates the transportation of call set-up and call detail information. 47 C.F.R. § 54.101(a)(3). The FCC has recognized that “wireless carriers use out-of-band signaling mechanisms [It] is appropriate to support out-of-band signaling mechanisms as an alternative to DTMF signaling.”⁷ ACC currently uses out-

⁵ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Order and Order on Reconsideration*, FCC 03-170, ¶ 14 (rel. July 14, 2003) (“*July 2003 Order*”).

⁶ *Virginia Cellular Order*, ¶ 20

⁷ *Universal Service Order*, ¶ 71.

of-band digital signaling and in-band multi-frequency signaling that is the functional equivalent of DTMF signaling, in accordance with the FCC's requirements.

(d) Single-Party Service or its Functional Equivalent: The FCC has determined that a CMRS provider meets the requirement of offering single party service when it offers a dedicated message path for the length of a user's particular transmission. 47 C.F.R. § 54.101(a)(4). ACC meets the requirement of single-party service by providing a dedicated message path for the length of a user's wireless transmission in all of its service offerings.

(e) Access to Emergency Service: "Access to emergency service" means the ability to reach a public service answering point ("PSAP") by dialing "911." The FCC also requires that a carrier provide access to enhanced 911 or "E911," which includes the capability of providing both automatic numbering information ("ANI") and automatic location information ("ALI"), when the PSAP is capable of receiving such information and the service is requested from the carrier. 47 C.F.R. § 54.101(a)(5). ACC currently provides all of its customers with the ability to access emergency services by dialing "911." ACC has received thirty-five requests from local PSAPs for deployment of Phase II E911 service in Kentucky. ACC expects to deploy Phase II E911 in response to fourteen of these PSAP requests on approximately April 9, 2005. ACC is continuing to work with the twenty-one remaining PSAPs to deploy Phase II E911 in accordance with the federal requirements.

(f) Access to Operator Services: "Access to operator services" means any automatic or live assistance provided to a customer to arrange for the billing or completion, or both, of a telephone call. 47 C.F.R. § 54.101(a)(6). ACC meets this requirement by providing all of its customers with access to operator services provided either by ACC or third parties.

(g) Access to Interexchange Service: “Access to interexchange service” means the ability to make and receive toll or interexchange calls. 47 C.F.R. § 54.101(a)(7). Equal access to interexchange service, *i.e.*, the ability of a customer to access a presubscribed long distance carrier by dialing 1+number, is not required.⁸ ACC currently meets this requirement by providing all of its customers with the ability to make and receive interexchange calls.

(h) Access to Directory Assistance: “Access to directory assistance” means the ability to provide access to a service that makes directory listings available. 47 C.F.R. § 54.101(a)(8). ACC currently meets this requirement by providing all of its customers with access to directory assistance by dialing “411” or “555-1212.”

(i) Toll Limitation Services: An ETC must offer “toll limitation” services to qualifying low-income consumers at no charge. FCC Rule 54.400(d) defines “toll limitation” as either “toll blocking” or “toll control” if a carrier is incapable of providing both, but as both “toll blocking” and “toll control” if a carrier can provide both. Toll blocking allows consumers to elect not to allow the completion of outgoing toll calls. Toll control allows consumers to specify a certain amount of toll usage that may be incurred per month or per billing cycle. 47 C.F.R. § 54.500(b)-(c). ACC is not, at this time, capable of providing toll control. However, ACC is capable of providing toll blocking and provides toll blocking to Lifeline customers in other states in which the Company has been designated an ETC consistent with the FCC’s rules. ACC will utilize its existing toll-blocking technology to provide the service to its Lifeline customers in the ETC Service Areas, at no charge, as part of its service offerings.

⁸ *July 2003 Order*, ¶¶ 14-15; *Universal Service Order*, ¶ 78.

C. ACC Will Offer and Advertise the Availability of, and Charges for, the Supported Services Throughout Its ETC Service Areas

20. The third requirement for ETC designation is that an applicant advertise the availability of, and charges for, the Supported Services using media of general distribution. 47 U.S.C. § 214(e)(1)(B).

21. ACC currently offers and advertises its wireless telecommunications services to customers in Kentucky using media of general distribution, including radio, television, billboard, print advertising, and the Internet at www.celloneusa.com. ACC also maintains various retail store locations and sales agents throughout its Licensed Service Areas, which provide an additional source of advertising.

22. As a federal ETC, ACC will advertise the availability of its service offerings and the corresponding rates for those services throughout its ETC Service Areas through media of general distribution. ACC's advertisements of its service offerings will be part of and integrated into its current advertising for its existing array of services and offerings in a manner that fully complies with federal requirements, and ACC commits to such advertisements in the future.

D. ACC Will Provide the Supported Services Throughout Its Designated ETC Service Areas

23. Consistent with the obligations of a competitive federal ETC, ACC commits to provide the Supported Services to any customer within its designated ETC Service Areas upon reasonable request. Further, ACC will provide Lifeline and Link Up assistance to qualified, low-income consumers consistent with the requirements of 47 C.F.R. § 54.400, *et seq.*

24. As set forth in **Exhibits A and B** attached hereto, ACC is requesting designation as a competitive ETC only in those areas that are wholly contained within the geographic limits of the Company's licensed Service Areas in Kentucky.⁹

25. To the extent the Commission were to find that the limits of ACC's FCC-licensed Service Area prevents it from providing service throughout a rural telephone company study area, ACC requests redefinition of the study area requirement pursuant to 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207.¹⁰

**VI. DESIGNATING ACC AS A COMPETITIVE FEDERAL ETC
WILL SERVE THE PUBLIC INTEREST**

26. In an area served by a non-rural telephone company, the Commission must find that the designation of a competitive ETC is consistent with the public interest, convenience and necessity. This standard is met where the applicant satisfies the prerequisites of 47 U.S.C. § 214(e)(1) and can offer consumers a competitive alternative to the incumbent carrier. As discussed above, ACC fully satisfies each of the requirements of 47 U.S.C. § 214(e)(1). In addition, ACC's unique service offerings will provide Kentucky consumers with a true

⁹ In the event any non-rural telephone company service area is determined to be served by a rural telephone company, ACC requests that the service area requirement be redefined from the study area to the individual wire center level to facilitate its designation as a competitive ETC in the wire centers identified on Exhibit A.

¹⁰ Redefinition of the service area requirement is not required to designate ACC as a competitive ETC in the Stearns-Whitley and Pine Knot exchanges of Highland Telephone Cooperative, Inc. – KY. Although the two wire centers are included in Highland's Tennessee study area, the Commission may designate ACC in the portion of the study area that is contained within the boundaries of the Commonwealth of Kentucky, and the redefinition procedures set forth in 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207 are not applicable. *In the Matter of Federal-State Board on Universal Service, Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, CC Docket No. 96-45, *Memorandum Opinion and Order*, DA 00-2896, ¶¶ 23-24 n.71 (rel. Dec. 26, 2000); *see also In the Matter of Federal-State Board on Universal Service, Petitions for Reconsideration of Western Wireless Corporation's Designation as an Eligible Telecommunications Carrier on Reconsideration*, CC Docket 96-45, *Order*, FCC 01-311, ¶¶ 7-13 (rel. Oct. 19, 2001).

competitive alternative to the incumbent carriers by increasing customer choice and access to innovative services and new technologies.

27. In an area served by a rural telephone company, the Commission must separately find that the designation of a competitive ETC will also satisfy the “public interest” requirement of 47 U.S.C. § 214(e)(2).

28. In *Virginia Cellular*, the FCC identified five factors to consider in determining whether the designation of a competitive ETC in a rural telephone company’s service area is in the public interest.¹¹ These factors include: (1) the benefits of increased competitive choice, (2) the unique advantage and disadvantages of the competitor’s service offering, (3) the impact of multiple designation on the universal service fund, (4) any commitments made regarding quality of telephone service provided by competing providers, and (5) the competitive ETC’s ability to provide the Support Services throughout the designated service area within a reasonable time frame.¹² As demonstrated below, designating ACC as a competitive ETC in Kentucky is consistent with each of the public interest considerations articulated by the FCC in *Virginia Cellular*.

A. Benefits of Increased Competitive Choice

29. The FCC has repeatedly acknowledged the inherent consumer benefits of increased competition in the telecommunications market. In sum, increased competition drives down prices, improves service quality, and promotes the development of advanced communications services:

We note that an important goal of the Act is to open local telecommunications markets to competition. Designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer

¹¹ *Virginia Cellular Order*, ¶ 4.

¹² *Virginia Cellular Order*, ¶ 28; see also *Nextel Partners Order*, p. 7-10.

choice, innovative services, and new technologies. We agree with Western Wireless that competition will result not only in the deployment of new facilities and technologies, but will also provide an incentive to the incumbent rural telephone companies to improve their existing network to remain competitive, resulting in improved service to Wyoming consumers. In addition, we find that the provision of competitive service will facilitate universal service to the benefit of consumers in Wyoming by creating incentives to ensure that quality services are available at “just, reasonable, and affordable rates.”

* * *

We reject the general argument that rural areas are not capable of sustaining competition for universal service support. We do not believe that it is self-evident that rural telephone companies cannot survive competition from wireless providers. Specifically, we find no merit to the contention that designation of an additional ETC in areas served by rural telephone companies will necessarily create incentives to reduce investment in infrastructure, raise rates, or reduce service quality to consumers in rural areas. To the contrary, we believe that competition may provide incentives to the incumbent to implement new operating efficiencies, lower prices, and offer better service to its customers. . . .¹³

30. Kentucky’s rural consumers should be able to choose their telecommunications provider based on their own needs and not be restricted to the services offered by an incumbent rural telephone company. Designating ACC as a competitive ETC will allow the consumers in its requested ETC Service Areas to choose their provider based on the price, services, service quality, customer service and service availability offered by openly competing companies. In addition, with increased competitive choice Kentucky’s rural consumers can expect lower rates and improved service as competition provides an incentive for the incumbent rural telephone companies to invest in new technologies and additional infrastructure.

B. Unique Advantages of ACC’s Service Offerings

31. The FCC has recognized the specific benefits and advantages of wireless service, including the provision of service to customers who do not have access to wire line service, the

¹³ *In the Matter of the Federal-State Joint Board on Universal Service, Western Wireless Corp. Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, CC Docket No. 96-45, *Memorandum Opinion and Order*, DA 00-2896, ¶¶ 17 & 22 (rel. Dec. 26, 2000) (emphasis added).

mobility of service and the availability of a larger local calling area.¹⁴ The benefits and advantages of wireless service are particularly important in rural and insular areas, where the FCC has found that the mobility and access to emergency services offered by wireless carriers can mitigate the unique risks of geographic isolation.¹⁵

32. The safety benefits associated with mobile wireless service are undisputed. The National Telecommunications Cooperative Association (“NTCA”) – the “preeminent telecommunications industry organization dedicated exclusively to representing and serving the interests of the nation’s small, rural incumbent local exchange carriers” – recently acknowledged the essential safety benefits of wireless service in its 2004 Rural Youth Telecommunications Survey:

An astonishing 86% of survey respondents said they have their own wireless phone, leaving only 14% without. This penetration rate among rural teens, which is significantly higher than estimations for the youth market on a national level, most likely is attributed to the safety and convenience issues associated with life in small towns. While statistics show that the crime rates in small towns typically are lower than those in urban areas, safety still is a major concern due to the spread-out nature of rural communities, the long distances traveled to go to school or sports activities, and the steady decline of payphones in small communities. When a teen becomes stranded with a flat tire on a rural road at night, a personal, mobile communication device is more than a convenience. It is a safety tool. The fear of scenarios such as this provides much of the push behind wireless penetration in rural youth markets. For this reason, a mobile wireless device increasingly is seen as more of a necessity than a luxury in rural America.

* * *

One might think that teens provide the impetus for subscribing to wireless telephone service. However, further investigation reveals that many don’t even have to ask for the phone, but instead are offered the device by their parents, as 60% of survey takers indicated that their parent or guardian pays for the service. Safety issues and the desire to “keep in touch” were the prime motivating factors

¹⁴ *Virginia Cellular Order*, ¶ 29.

¹⁵ *Id.*

behind the parental purchases of wireless service.¹⁶

33. Likewise, NTCA acknowledged the critical importance of rural/urban telecommunications parity to long-term economic development as follows:

Rural America is threatened by a “brain drain” — its young people typically go away to college in larger metropolitan areas, and in many cases, leave behind for good their rural homes to live in urban areas after graduation. This loss of an educated labor force could have a potentially dramatic impact on the future viability of rural America. The ability to offer the same state-of-the-art telecommunications services as are available in non-rural areas could play a significant role in increasing the attractiveness and livability of rural communities.¹⁷

34. Designating ACC as a competitive ETC in its requested ETC Service Areas will provide tangible benefits to consumers, including mobility, increased access to emergency services, and access to innovative services. ACC is well positioned to offer consumers in rural and high-costs areas of Kentucky a true competitive alternative to the incumbents LECs, and the Company is fully committed to providing industry-leading wireless service to its Kentucky customers.

35. ACC has undertaken an aggressive program to improve and upgrade its network facilities to provide cutting edge technology to its subscribers. The Company operates TDMA technology in 100% of its managed network and recently deployed GSM/GPRS technology throughout all of its markets. The Company now offers the most advanced available array of wireless services, utilizing both TDMA and GSM/GPRS and EDGE wireless technologies. The Company continues to lead the way for the telecommunications industry, now focused on developing 3G services that will provide wireless data services at high speeds.

¹⁶ NTCA 2004 Rural Youth Telecommunications Survey, p. 2 & 5 (emphasis added). Available at http://www.ntca.org/content_documents/2004RuralYouthTelecommunicationsSurvey.pdf.

¹⁷ *Id.*, p. 1

36. In addition, ACC's service offerings will benefit rural customers in Kentucky who may not have access to wireline telephones and will include a larger local calling area than those of the incumbent LECs. Other benefits and advantages of ACC's service offerings include state-of-the-art network facilities; reduced long-distance rates; competitive pricing; 24-hour customer service; enhanced features, such as voice-mail, caller-ID, call-waiting, and call-forwarding; and high-speed data functions including wireless email and internet access.

37. Designating ACC as a competitive ETC will provide Kentucky consumers in rural and high-cost areas with access to all of the benefits and advantages discussed above and will provide an enhanced ability for consumers to choose their telecommunications provider based on their own needs. Furthermore, all rural consumers will benefit from ACC's use of universal service support to improve and expand its existing network and, thereby, expand the availability and quality of its services.

C. Impact of ACC's Designation on the Universal Service Fund

38. The FCC has acknowledged that USF support provided to competitive ETCs accounts for only a small percentage of the increase in the size of the fund, while disbursements to incumbent carriers continue to substantially increase the size of the fund.¹⁸ Moreover, the FCC has concluded that comparing the impact of any one competitive ETC on the overall fund is, at best, inconclusive.¹⁹

39. In any event, granting ACC's Petition in this case would not result in an appreciable increase in the size of the fund. If the Commission grants ACC's Petition, the Company currently estimates that it would be eligible to receive approximately \$494,630 per

¹⁸ *Virginia Cellular Order*, ¶ 31 n. 98. In fact, in 2003 support provided to competitive ETCs accounted for only 4% of the high cost universal service fund. See <http://www.universalservice.org/hc/download/pdf/HC%20CETC%20%25%20Disburse.pdf>

¹⁹ *Id.*

month in high-cost universal service support. This estimate represents only 0.15% of the total high-cost support available to all ETCs for the first quarter of 2005.²⁰ Therefore, designating ACC as a competitive ETC throughout its requested ETC service area would have only a negligible impact on the federal USF. Indeed, ACC would be eligible to receive far less than support amounts deemed inconsequential by the FCC.²¹

D. ACC's Commitment to Service Quality

40. In *Virginia Cellular*, the FCC determined that a carrier's adoption of the CTIA Code of Conduct for Wireless Service ("CTIA Code") evidences a commitment to quality service that advances the public interest.²² ACC has adopted the CTIA Code and is committed to compliance with CTIA Code in areas where it is seeking designation as a competitive ETC. Moreover, ACC commits to reporting to the Commission the number of consumer complaints per 1,000 handsets or an annual basis. The FCC considers such a commitment to be a strong indicator of a company's commitment to service quality.²³

41. In addition, ACC has made a substantial commitment to providing and maintaining essential telecommunications services in times of emergency. To ensure the availability of service in Kentucky, the Company has developed and implemented a Recovery

²⁰ See Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter of 2005, Appendix HC 1 (Universal Service Administrative Company, Nov. 2, 2004) (determining total monthly amount of high-cost universal service support available to ETCs to be \$325,634,944). Available at www.universalservice.org/overview/filings/2005/Q1/HC01%20-%20High%20Cost%20Support%20Projected%20by%20State%20by%20Study%20Area%20-%201Q2005.xls.

²¹ *Virginia Cellular Order*, ¶ 31, n. 96 (0.105% increase inconsequential); *In the Matter of Advantage Cellular Systems, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee*, CC Docket No. 96-45, *Order*, DA 04-3357, ¶ 25, n. 82 (rel. Oct. 22, 2004) (0.419% increase inconsequential); *In the Matter of NPCR, Inc. d/b/a Nextel Partners Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, Florida, Georgia, New York, Pennsylvania, Tennessee, and Virginia*, CC Docket No. 96-45, *Order*, DA 04-2667, ¶ 21, n. 69 (rel. Aug. 25, 2004) (1.88% increase inconsequential).

²² *Virginia Cellular Order*, ¶ 30.

²³ *Id.*

Action Plan for each of its network mobile switching offices and attendant facilities. The Company has also allocated and deployed backup equipment and spares including such things as additional microwave facilities, antennas, battery backups and generators.

42. The emergency recovery planning employed by ACC and its affiliate Dobson Cellular Systems, Inc. has already proved to be invaluable. For example, during the extensive blackout throughout the northeast U.S. in August 2003, the affected networks handled a substantial increase in call volume with little reduction in service despite the loss of commercial power to 300 cell sites.²⁴

E. ACC's Commitment to the Extension of Service

43. The final factor to be considered is the applicant's capability and commitment to meet service requests within a reasonable period of time. In *Virginia Cellular*, the FCC accepted the applicant's specific commitment to follow a multi-step service extension policy to evaluate service requests from an area outside its existing coverage area.²⁵ Virginia Cellular committed to taking the following steps to respond to all reasonable requests for service:

- (1) modifying or replacing the customers equipment to provide service;
- (2) deploying a roof-mounted antenna or other equipment to provide service;
- (3) making adjustments to the nearest cell tower to provide service;
- (4) making adjustments to network or customer facilities to provide service;
- (5) offering resold services from another carrier's facilities to provide service; and
- (6) employing or constructing an additional cell site, cell extender, or repeater.²⁶

44. ACC commits to follow the same procedures approved by the FCC in *Virginia Cellular* to provide service to all requesting customers within the Company's designated

²⁴ See Press Release, Dobson Communications' Wireless Network Passes the Test; Northeast Power Outage Forces 300 Cellular Sites to Switch to Back-Up Power (Aug. 15, 2003). Available at www.dobson.net. ACC is licensed to provide service in the affected service areas, including Poughkeepsie Metropolitan Service Area (MSA), Orange County MSA, New York RSA 5 and New York RSA 6.

²⁵ *Virginia Cellular Order*, ¶ 15.

²⁶ *Id.*

ETC Service Areas upon reasonable request. In the event ACC is unable to provide service to a requesting customer, the Company commits to annually report to the Commission the number of unfulfilled service requests it received.

VII. HIGH-COST CERTIFICATION

45. Under the FCC's Rules, states that desire ETCs within their jurisdiction to receive high-cost universal service support must file an annual certification with the Universal Service Administrative Company ("USAC") and the FCC stating that all federal high-cost support provided to such carriers will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.²⁷ Accordingly, ACC requests that the Commission certify ACC's use of support effective as of the date of the Company's ETC designation.

46. In order for ACC to receive high-cost universal service support commencing as of the date of the Company's ETC designation, the Commission may supplement its annual certification by separately certifying ACC's use of such support. The FCC's Rules expressly provide that state commissions may file supplemental certifications for carriers not subject to the State's annual certification, such as those carriers who were not yet designated as ETCs at the time.²⁸ Accordingly, ACC respectfully requests that the Commission supplement its annual certification by separately certifying ACC's use of support and transmitting a letter to the FCC and USAC in the form attached here as **Exhibit C**.

47. In support of ACC's request, the Company hereby certifies that it will utilize all federal high-cost universal service support it receives on or after the date of its designation as a

²⁷ 47 C.F.R. §§ 54.313(a), 54.314(a).

²⁸ 47 C.F.R. §§ 54.313(c), 54.314(c).

competitive ETC only for the provision, maintenance, and upgrading of facilities and services for which the support is intended pursuant to 47 U.S.C. § 254(e).


VIII. CONCLUSION

48. Based upon the foregoing, ACC respectfully requests that the Commission designate ACC as a competitive federal ETC for purposes of receiving federal universal service support effective as of the date of the Commission's order.

Respectfully submitted,

Dated: March 29, 2005

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By 

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CERTIFICATE OF SERVICE

I hereby certify that I have on this 29th day of March, 2005 served a true and correct copy of the foregoing VERIFIED PETITION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE COMMONWEALTH OF KENTUCKY on the following by UPS Overnight Delivery:

Brian Harman
Alltel Kentucky, Inc.
229 Lees Valley Road
Shepherdsville, Kentucky 40165


William W. Magruder
Duo County Telephone
Cooperative Corporation, Inc.
1021 W. Cumberland Avenue
Jamestown, Kentucky 42629

F.L. Terry
Highland Telephone Cooperative, Inc.
7840 Morgan County Highway
Sunbright, Tennessee 37872

Steve Mowery
Kentucky Alltel, Inc. – London
230 Lexington Green Circle
Lexington, Kentucky 40588-1650

Forest Wilson
South Central Rural Telephone
Cooperative Corporation, Inc.
1399 Happy Valley Road
Glasgow, Kentucky 42141-1261

Dorothy Chambers
BellSouth Telecommunications, Inc.
601 West Chestnut Street
Louisville, Kentucky 40203



COUNSEL FOR AMERICAN CELLULAR
CORPORATION

**COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION**

In the matter of:

AMERICAN CELLULAR CORPORATION
petition for designation as a competitive
eligible telecommunications carrier pursuant
to Section 214(e) of the Telecommunications
Act of 1996

Case No. 2005-00130

CERTIFICATION OF THOMAS A. COATES

Thomas A. Coates, hereby certifies as follows:

1. I serve as Vice President, Corporate Development for Dobson Communications and each of its affiliates, including American Cellular Corporation.

2. I have reviewed the forgoing Petition and the facts stated therein, of which I have personal knowledge, are true and correct to the best of my present knowledge, information and belief.

3. I certify, under penalty of perjury, that all federal high-cost universal service support will be used by American Cellular Corporation only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, pursuant to Section 254(e) of the Telecommunications Act of 1996.

Date: March 18, 2005

American Cellular Corporation

By Thomas A. Coates

Thomas A. Coates

Vice President, Corporate Development

Subscribed and sworn to before me this
18 day of March, 2005

Mary L. McCalip
Notary Public

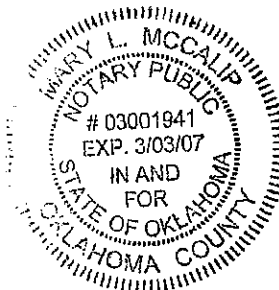


Exhibit B

**Kentucky PSC's August 15, 2005 Order Approving
American Cellular Corporation's
Petition for ETC Designation**

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF AMERICAN CELLULAR)	
CORPORATION PETITION FOR)	
DESIGNATION AS AN ELIGIBLE)	CASE NO. 2005-00130
TELECOMMUNICATIONS CARRIER)	
PURSUANT TO SECTION 214(E) OF THE)	
TELECOMMUNICATIONS ACT)	

O R D E R

On March 29, 2005, American Cellular Corporation ("ACC") filed an application seeking Eligible Telecommunications Carrier ("ETC") status within the territory of which it is licensed to operate.

The Commission set a procedural schedule in this case that allowed for public comments, data requests, and requests for a hearing. No comments on the application have been filed and no request for hearing has been made.

Discussion

47 U.S.C. § 254(e) provides that "only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific Federal universal service support." Pursuant to Section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.

Section 214(e)(2) of the Act provides state commissions with the primary responsibility for performing ETC designations. Under Section 214(e)(6), the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a

designated service area, consistent with the public interest, convenience, and necessity, so long as the requesting carrier meets the requirements of Section 214(e)(1). Before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.¹

An ETC petition must contain the following: (1) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to Section 254(c); (2) a certification that the petitioner offers or intends to offer the supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services”; (3) a description of how the petitioner “advertise[s] the availability of [supported] services and the charges therefore using media of general distribution”; and (4) if the petitioner meets the definition of a “rural telephone company” pursuant to Section 3(37) of the Act, the petitioner must identify its study area, or, if the petitioner is not a rural telephone company, it must include a detailed description of the geographic service area for which it requests an ETC designation from the Commission.

Offering the Services Designated for Support

ACC has demonstrated through the required certifications and related filings that it now offers, or will offer upon designation as an ETC, the services supported by the federal universal service mechanism. As noted in its petition, ACC is authorized to provide cellular mobile radiotelephone service (“CMRS”). ACC certifies that it now provides or will provide throughout its designated service area the services and

¹ 47 U.S.C. § 214(e)(6).

functionalities enumerated in Section 54.101(a) of the Federal Communications Commission's ("FCC") rules. ACC has also certified that, in compliance with Section 54.405, it will make available and advertise Lifeline service to qualifying low-income consumers.

Offering the Supported Services Using a Carrier's Own Facilities

ACC states that it intends to provide the supported services using its existing network infrastructure. ACC currently provides the service using its facilities-based digital network infrastructure and licensed CMRS spectrum in Kentucky.

The Commission finds that ACC has demonstrated that it satisfies the requirement of Section 214(e)(1)(A) that it offer the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services.

Advertising Supported Services

ACC has demonstrated that it satisfies the requirement of Section 214(e)(1)(B) to advertise the availability of the supported services and the charges therefore using media of general distribution. In its petition, ACC states that it currently advertises the availability of its services, and will do so for each of the supported services on a regular basis, in newspapers, magazines, television, and radio in accordance with Section 54.201(d)(2) of the FCC's rules.

Non-Rural Study Areas

The FCC previously has found designation of additional ETCs in areas served by non-rural telephone companies to be *per se* in the public interest based upon a demonstration that the requesting carrier complies with the statutory eligibility

obligations of Section 214(e)(1) of the Act.² The Commission finds that ACC's public interest showing here is sufficient, based on the detailed commitments ACC has made to ensure that it provides high quality service throughout the proposed rural and non-rural service areas; that is, if ACC has satisfied the more rigorous public interest analysis for the rural study areas, it follows that its commitments satisfy the public interest requirements for non-rural areas.

Rural Study Areas

In considering whether designation of ACC as an ETC in areas served by rural telephone companies will serve the public interest, the Commission must consider whether the benefits of an additional ETC in such study areas outweigh any potential harm. In determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, the Commission must weigh the benefits of increased competitive choice, the impact of the designation on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service, and the competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame.

The Commission finds that ACC's universal service offering will provide a variety of benefits to customers. For instance, ACC has committed to provide customers access to telecommunications and data services where they do not have access to a

² See, e.g., Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier, Memorandum Opinion and Order, CC Docket No. 96-45, 16 FCC Rcd 39 (2000).

wireline telephone. In addition, the mobility of ACC's wireless service will provide benefits such as access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities. Moreover, ACC states that it offers larger local calling areas than those of the incumbent LECs it competes against, which could result in fewer toll charges for ACC's customers.

Public Interest Analysis

In determining whether the public interest is served, the burden of proof is upon the ETC applicant.³ ACC asserts that granting ETC designation to ACC will provide rural consumers the benefits of competition through increased choices and further the deployment of new telecommunications services. They also assert that granting the request will not harm consumers. ACC has satisfied the burden of proof in establishing that its universal service offering in this area will provide benefits to rural consumers.

Designated Service Areas

The Commission finds that ACC should be certified as an ETC in the requested service areas served by non-rural telephone companies, as listed in application. The Commission also finds that ACC should be certified as an ETC in the requested service areas served by rural telephone companies, as listed in the application. However, ACC's service area for each rural telephone company does not encompass the entire study area of each rural telephone company. Therefore the study areas of the affected rural carriers must be redefined to smaller study areas such that they will correspond to the wireless carrier's service area. The Commission finds that the study areas of the

³ See Highland Cellular Order 19 FCC Rcd at 6431, para. 20; Virginia Cellular Order, 19 FCC Rcd at 1574-75, para. 26.

affected rural telephone companies should be redefined as necessary to match the licensed service area of the applicant. ACC should petition the FCC for concurrence.

Regulatory Oversight

In addition to its annual certification filing under Sections 54.513 and 54.314 NPCR, Inc. d/b/a Nextel Partners, the first wireless carrier to qualify as an ETC agreed to submit records and documentation on an annual basis detailing: (1) its progress towards meeting its build-out plans; (2) the number of complaints per 1,000 handsets; and (3) information detailing how many requests for service from potential customers were unfulfilled for the past year.⁴ The Commission finds that ACC should be required to file this information and make any other information as it relates to service available to the Commission.

IT IS THEREFORE ORDERED that:

1. ACC shall be designated an ETC in the geographic areas requested and as listed in Appendix A, attached hereto and incorporated herein.
2. ACC shall offer universal support services to consumers in its service area.
3. ACC shall offer these services using its own facilities or a combination of its own facilities and resale of another carrier's services, including services offered by another.
4. ACC shall advertise the availability of and charges for these services using media of general distribution.

⁴ Case No. 2003-00143, Petition of NPCR, Inc. D/B/A Nextel Partners for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky, (December 16, 2004).

5. ACC is hereby certified as complying with the FCC's criteria, in accordance with 47 U.S.C. § 254(e), and therefore eligible to receive Universal Service Fund support for the current certification period.

6. By September 1, 2006, and each September 1 thereafter, ACC shall make its annual certification filing in Administrative Case No. 381⁵ and shall submit additional records as described herein.

7. ACC shall file with the Commission a copy of its petition to the FCC seeking concurrence in redefinition of the service areas of the rural companies.

8. A copy of this Order shall be served upon the FCC and the Universal Service Administration Company.

Done at Frankfort, Kentucky, this 15th day of August, 2005.

By the Commission

ATTEST:


Executive Director

⁵ Administrative Case No. 381, A Certification of the Carriers Receiving Federal Universal High-Cost Support.

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2005-00130 DATED August 15, 2005.

Designated areas for which American Cellular Corporation is granted ETC Designation

1. Rural Telephone Company Study Areas

260401 Duo County Telephone Cooperative Corporation, Inc.
290565 Highland Telephone Cooperative, Inc.
260418 South Central Rural Telephone Cooperative Corporation, Inc.
269691 Kentucky Alltel, Inc. London¹

AGSTKYXA	EBNKKYXA	GMTWKYXA	LWGMKYXA	SCHLKYXA
BKVLKYXA	EBRNKYXC	JHVLKYXA	MTOLKYXA	SOVLKYXA
BRHDKYXA	FBSHKYXA	LONDKYXA	MTVRKYXI	WASHKYXA
DOVRKYXA	FRNLKYXA	LVTNKYXA	MYLCKYXA	WHLLKYXA

2. Non-Rural ILEC Wire Centers

265182 BellSouth – KY

LBJTKYMA	BLFDKYMA	CRLSKYMA	LRBGKYMA	RCMDKYMA
MTEDKYMA	BRGNKYMA	DAVLKYMA	MTSTKYMA	SLVSKYMA
RSTRKYES	BRTWKYES	HDBGKYMA	MYVLKYMA	SPFDKYMA
FORDKYMA	CHPLKYMA	JNCYKYMA	NWHNKYMA	STFRKYMA
WSPNKYMA	CRBOKYMA	KKVLKYMA	PRVLKYMA	TYVLKYMA
WACOKYMA	WSBGKYMA			

269690 Kentucky ALLTEL, Inc. – Lexington

OLHLKYXA	BTVLKYXA	GLSGKYXA	LNCSKYXA	SHBGKYXA
GRSNKYXA	CECLKYXA	GNBGKYXB	LRTTKYXA	SHDNKYXA
BEREKYXA	CLMAKYXA	HGVLKYXA	MNTIKYXA	SLLCKYXA
ALBYKYXA	CMVLKYXA	HLBOKYXA	MRHDKYXA	SMRTKYXA
BRSDKYXA	EWNGKYXA	HTVLKYXE	NANCKYXA	TLBOKYXA
BRVLKYXA	EZTWKYXA	LBNNKYXA	OWVLKYXA	TMVLKYXA
BSVLKYXA	FMBGKYXA	LBRTKYXA	PNLCKYXE	VNBGKYXA

¹ American Cellular Corporation only requests designation as an ETC in the wire centers listed in this table for Kentucky Alltel, Inc. - London. Subject to concurrence of the FCC the request is granted.

Exhibit C
American Cellular Corporation's
September 6, 2005 Petition for Rehearing or Clarification

COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

In the matter of:

AMERICAN CELLULAR CORPORATION
petition for designation as a competitive
eligible telecommunications carrier pursuant
to Section 214(e) of the Telecommunications
Act of 1996

Case No. 2005-00130

RECEIVED

SEP 06 2005

PUBLIC SERVICE
COMMISSION

**AMERICAN CELLULAR CORPORATION'S
PETITION FOR REHEARING OR CLARIFICATION**

American Cellular Corporation ("ACC") hereby petitions the Public Service Commission ("Commission") pursuant to KRS 278.400 for rehearing or clarification of certain limited findings and conclusions set forth at pages 5-6 of the Commission's August 15, 2005 Order granting ACC's Petition for Designation as an Eligible Telecommunications Carrier ("ETC").¹ Specifically, ACC respectfully requests that the Commission amend its well-reasoned Order to include certain additional findings required for purposes of seeking Federal Communications Commission ("FCC") concurrence in the redefinition of Kentucky Alltel, Inc.'s London service area (SAC 269691) from the study area to the individual wire center level.

As discussed below, for purposes of federal universal service obligations, a rural telephone company's "study area" is presumed to be its "service area" unless and until the FCC and state commission cooperatively establish a different service area definition for such company after considering the Federal-State Joint Board on Universal Service's ("Joint Board") service

¹ Verified Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky (filed March 29, 2005) ("*ETC Petition*").

area recommendations. 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b). Accordingly, if a state commission proposes to define a rural telephone company service area as something less than the company's entire study area, the state commission must consider and make findings with respect to each of the three Joint Board factors discussed below.

In this case, although the Commission properly acted in redefining Kentucky Alltel, Inc.'s London service area to enable ACC's designation as a competitive ETC in certain individual wire centers, the Commission's Order does not contain findings or conclusions addressing each of the three Joint Board factors. As a result, ACC respectfully requests that the Commission amend its Order to enter such findings and conclusions so that ACC may comply with the Commission's directive to petition the FCC for concurrence. *Order*, p. 6 ("ACC should petition the FCC for concurrence.")

I. BACKGROUND

As set forth in its ETC Petition in this proceeding, ACC sought designation as a competitive ETC in certain rural telephone company and non-rural telephone company service areas within the Company's FCC-licensed service area in the Commonwealth of Kentucky. For purposes of federal universal service obligations, ACC asserted that Kentucky Alltel, Inc.'s London service area (SAC 269691) may be considered non-rural. The Commission disagreed.

Because the geographic limitations of ACC's FCC-licensed service area prevent it from providing facilities-based service throughout Kentucky Alltel, Inc.'s London service area, ACC alternatively sought to be designated only in those Kentucky Alltel, Inc. – London wire centers encompassed by its FCC-licensed service area subject to Commission and FCC redefinition of the service area requirement. *ETC Petition*, ¶¶ 24 n. 9, 25. Pursuant to ACC's request, the

Commission conditionally designated ACC as a competitive ETC in twenty Kentucky Alltel, Inc.

- London wire centers² pending FCC concurrence with its redefinition determination:

The Commission finds that ACC should be certified as an ETC in the requested service areas served by non-rural telephone companies, as listed in application. The Commission also finds that ACC should be certified as an ETC in the requested service areas served by rural telephone companies, as listed in the application. However, ACC's service area for each rural telephone company does not encompass the entire study area of each rural telephone company. Therefore the study areas of the affected rural carriers must be redefined to smaller study areas such that they will correspond to the wireless carrier's service area. The Commission finds that the study areas of the affected rural telephone companies should be redefined as necessary to match the licensed service area of the applicant. ACC should petition the FCC for concurrence.

Order, pp. 5-6 (emphasis added).

For the reasons addressed below, the Commission should amend and clarify the portion of its Order redefining Kentucky Alltel, Inc.'s London service area to include findings and conclusions consistent with the requirements of 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(b)-(c).

II. ARGUMENT

Pursuant to KRS 278.400, any party to a proceeding³ before the Commission may, within twenty days after service of an order, seek rehearing and offer any evidence that could not reasonably have been presented earlier in the proceeding. Upon such petition, the Commission may amend or modify its former orders, and make and enter such further orders as it deems necessary. Accordingly, in acting on ACC's instant petition, the Commission may receive

² *Order*, Appendix A, ¶ 1 (AGSTKYXA, BKVLKYXA, BRHDKYXA, DOVRKYXA, EBNKKYXA, EBRNKYAC, FBShKYXA, FRNLKYXA, GMTWKYXA, JHVLKYXA, LONDKYXA, LVTNKYXA, LWGMKYXA, MTOLKYXA, MTRKYAI, MYLCKYXA, SCHLKYXA, SOVLKYXA, WASHKYXA, WHLLKYXA).

³ Notably, ACC is the only party to the above proceeding as no party sought to intervene or object to ACC's ETC Petition.

additional evidence into the record and amend and clarify its August 15, 2005 Order for purposes of making findings with respect to each of the three Joint Board factors set forth below.

A. The Service Area Requirement

Under 47 U.S.C. § 214(e) and FCC regulations, an applicant for federal ETC designation must demonstrate that it has the capability and commitment to provide the supported services identified in 47 C.F.R. § 54.101(a)(1)-(a)(9) throughout a designated "service area." Section 214(e)(5) defines "service area" as a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms. 47 U.S.C. § 214(e)(5). In an area served by a rural telephone company, section 214(e)(5) and 47 C.F.R. § 54.207(b) provide that the "service area" is presumed to be the rural telephone company's "study area,"⁴ unless and until the FCC and state commission establish a different service area definition for such company after considering each of the three Joint Board factors set forth below.⁵

In order to redefine the service area of a rural telephone company, both the Commission and FCC are required to consider the three factors set forth in recommendations made by the Joint Board. 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b). The three Joint Board considerations include: (1) the risk that an ETC applicant will seek designation only in low-cost, high-support areas — a practice referred to as "creamskimming;" (2) the effect, if any, redefinition may have on the rural telephone company's unique regulatory status; and (3) the additional administrative burdens, if any, that may result from redefinition.

⁴ A "study area" is generally considered to be all of the rural telephone company's existing, certificated exchange areas in a given State. *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, FCC 97-157, ¶ 172, n. 434 (rel. May 8, 1997) ("Universal Service Order").

⁵ The FCC specifically encouraged redefinition as a mechanism to allow competitive entry into portions of a rural telephone company study area, particularly where the study area is large or non-contiguous. *Universal Service Order*, ¶ 189.

B. Redefinition In This Proceeding Does Not Present Any Risk Of Creamskimming

1. ACC Is Not Engaged In Intentional Creamskimming

As set forth in its ETC Petition, ACC sought designation in each Kentucky Alltel, Inc. – London wire center located wholly within its FCC-licensed service area.⁶ The FCC has expressly concluded that a wireless carrier seeking ETC designation in the wire centers within its FCC-licensed boundaries is not engaging in intentional creamskimming.⁷ In other words, concerns regarding intentional creamskimming are eliminated because ACC did not specifically pick the areas in which it will serve, but instead will serve only those areas within its FCC-licensed service area.

2. Redefinition Will Not Create The Unintended Effects Of Creamskimming

The FCC has also noted that in certain situations an ETC applicant's request for redefinition could – through no fault of the applicant – have the unintended effect of creamskimming.⁸ However, the risk of creamskimming has been virtually eliminated by the FCC's implementation of the disaggregation mechanism set forth in 47 C.F.R. § 54.315. The FCC offered rural telephone companies the option to “disaggregate” – *i.e.*, target – the federal universal service support amounts they receive to the higher-cost portions of their study areas. In so doing, rural telephone companies were given the opportunity to target support to ensure that a competitive ETC would receive less per-line support in low-cost areas and, conversely, to ensure

⁶ ACC is not seeking redefinition to the partial wire center level. The FCC addressed and declined to grant partial wire center redefinition in *In the Matter of Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, *Memorandum Opinion and Order*, FCC 04-37 ¶ 33 (rel. Apr. 12, 2004) (“*Highland Cellular*”). Because all of the wire centers for which ACC is seeking redefinition are located entirely within its FCC-licensed service area, the concerns addressed in *Highland Cellular* are not present here.

⁷ *In the Matter of Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, *Memorandum Opinion and Order*, FCC 03-338, ¶ 32 (rel. Jan. 22, 2004) (“*Virginia Cellular*”).

⁸ *Virginia Cellular*, ¶ 33.

that a competitive ETC would only receive higher per-line support in truly high-cost portions of their study areas. The FCC has concluded that the disaggregation mechanism has “substantially eliminated” any creamskimming concerns.⁹ A rural telephone company’s voluntary election to forgo disaggregation – like Kentucky Alltel, Inc.’s decision in Kentucky - indicates that the company does not perceive the risk of creamskimming to be of concern within its study area.¹⁰

The FCC has also endorsed conducting a “population density” analysis as a proxy to assess the risk of unintended creamskimming. A population density analysis compares the population density of the wire centers where ETC designation is requested to the population density of the wire centers where ETC designation is not requested.¹¹

In this case, the results of a population density analysis confirm that redefinition of the Kentucky Alltel, Inc. – London service area for purposes of designating ACC in the twenty wire centers identified at Appendix A of the Commission’s Order will not create the unintended effects of creamskimming. Using publicly available data regarding the geographic size and population of each wire center, ACC has calculated the population density per square mile of the wire centers in which the Company was conditionally designated as an ETC and the wire centers areas in which the Company did not seek ETC designation. A table summarizing this analysis is attached here as **Exhibit D**.¹²

⁹ *In the Matter of Federal-State Joint Board on Universal Service Petitions for Reconsideration of Western Wireless Corporation’s Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, CC Docket No. 96-45, *Order on Reconsideration*, FCC 01-311 ¶ 12 (rel. Oct. 19, 2001).

¹⁰ *See In The Matter of the Application of N.E. Colorado Cellular, Inc. to Re-Define the Service Area of Eastern Slope Rural Telephone Association, Inc., Great Plains Communications, Inc., Plains Coop Telephone Association, Inc. and Sunflower Telephone Co., Inc.*, Docket No. 02A-444T, *Decision Denying Exceptions and Motion to Reopen Record*, Decision No. C03-1122, ¶ 38 (Aug. 27, 2003) (decision of rural carriers not to target support “is probative evidence of the carriers’ lack of concern with creamskimming.”)

¹¹ *Virginia Cellular*, ¶ 34; *Highland Cellular*, ¶ 28.

¹² Exhibits A through C were previously filed with ACC’s ETC Petition.

The population density analysis set forth in **Exhibit D** confirms that no effects of creamskimming will result from the Commission's designation of ACC in the Kentucky Alltel, Inc. – London service area in this proceeding. As demonstrated on **Exhibit D**, the population density of the wire centers in which the Commission conditionally designated ACC (57.94 persons per square mile) is only slightly higher than the population density of wire centers in which ACC did not seek designation (50.49 persons per square mile). Indeed, there is only a difference of 7 people per square mile at an overall population density exceeding 50 people per square mile. This does not present the kind of service disparity the FCC is concerned with. Therefore, the Commission's designation of ACC in Kentucky Alltel, Inc.'s London service area does not present any risk of creamskimming.¹³

C. Redefinition Does Not Impact A Rural Telephone Company's Regulatory Status

The second Joint Board factor that must be considered is whether redefinition will impact the unique regulatory status enjoyed by a rural telephone company under the Telecommunications Act of 1996. There is none. Nothing in the service area redefinition process affects a rural telephone company's statutory exemptions from interconnection, unbundling and resale requirements under Section 251(c) of the Act. Nor does it compromise or impair the company's unique treatment as a rural telephone company under 47 U.S.C. § 251(f).

Additionally, as the FCC recently confirmed, the redefinition process does not affect the way in which a rural telephone company calculates its embedded costs or the amount of federal universal service support it receives:

¹³ Even if there were any concerns regarding the potential effects of creamskimming in this proceeding, the FCC has observed that a state commission may order the incumbent rural telephone company to disaggregate its federal universal support and target the support to the higher-cost portions of its study area. *Virginia Cellular*, ¶ 35 n. 112.

(1) the high-cost universal service mechanisms support all lines served by ETCs in rural areas; (2) receipt of high-cost support by [the applicant] will not affect the total amount of high-cost support that the incumbent rural telephone company receives; (3) to the extent that [the applicant] or any future competitive ETC captures incumbent rural telephone company lines to existing wireline subscribers, it will have no impact on the amount of universal service support available to the incumbent rural telephone companies for those lines they continue to serve; and (4) redefining the service areas of the affected rural telephone companies will not change the amount of universal service support that is available to these incumbents.

* * *

Under the Commission's rules, receipt of high-cost support by [a competitive ETC] will not affect the total amount of high-cost support that the incumbent rural telephone company receives.¹⁴

Rather, the redefinition process only modifies the service area requirement for purposes of designating a competitive ETC. Thus, nothing in the redefinition process will impact Kentucky Alltel, Inc.'s regulatory status.

D. Redefinition Does Not Create Any Administrative Burdens

The third and final Joint Board factor to consider is whether any administrative burdens will result from redefinition of the service area requirement. A rural telephone company's universal service support payments are currently based on the carrier's embedded costs determined at the study area level.¹⁵ The FCC has recently confirmed that redefinition does not affect this calculation or create any additional administrative burdens for the rural telephone company:

[R]edefining the rural telephone company service areas as proposed will not require the rural telephone companies to determine their costs on a basis other than the study area level. Rather, the redefinition merely enables competitive ETCs to serve areas that are smaller than the entire ILEC study area. Our decision to redefine the service areas does not modify the existing rules applicable to rural telephone companies for calculating costs on a study area basis, nor, as a practical matter, the manner in which they will comply with these rules.

¹⁴ *Virginia Cellular*, ¶¶ 41, 43; *see also Highland Cellular*, ¶ 40.

¹⁵ *Universal Service Order*, ¶ 189.

Therefore, we find that the concern of the Joint Board that redefining rural service areas would impose additional administrative burdens on affected rural telephone companies is not at issue here.¹⁶

Just as in *Virginia Cellular*, the Commission's redefinition determination in this proceeding will not impact Kentucky Alltel, Inc.'s universal service support calculations and will not create any additional burdens.

Accordingly, the Commission should amend its Order to reflect its consideration of each of the three Joint Board factors. The Commission should further amend its Order to enter the following findings and conclusions:

1. Redefinition of the Kentucky Alltel, Inc. – London service area to permit ACC's designation as a competitive ETC poses no risk of creamskimming;
2. Redefinition of the Kentucky Alltel, Inc. – London service area to permit ACC's designation as a competitive ETC will not affect Kentucky Alltel, Inc.'s unique regulatory status under the Telecommunication Act of 1996; and
3. Redefinition of the Kentucky Alltel, Inc. – London service area to permit ACC's designation as a competitive ETC will not create any administrative burdens.

III. CONCLUSION

For the forgoing reasons, the Commission should amend its August 15, 2005 Order to include findings and conclusions consistent with the requirements of 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(b)-(c).

¹⁶ *Virginia Cellular*, ¶ 44 (emphasis added).

Dated: September 6, 2005

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EXHIBIT D

AMERICAN CELLULAR CORPORATION

Case No. 2005-00130

Summary of Study Area Population Density - Kentucky				
The following table depicts the population density per square mile for those areas in which American Cellular Corporation (ACC) was granted designation as a federal eligible telecommunications carrier (ETC) subject to redefinition of the service area requirement with those areas in which ACC did not seek ETC designation.				
Company Name	Service Area	Total Area (sq. mi.)	Total Population	Population Density (sq. mi.)
KENTUCKY ALLTEL, INC. - LONDON (SAC 269691)	Wire Centers in Which ACC was Granted ETC Designation	17,693.80	102,772.00	57.97
	Wire Centers in Which ACC Did Not Seek Designation	2,523.37	127,409.00	50.49

SAC	INCUMBENT CARRIER	WIRE CENTER CLT CODE	PERCENT COVERAGE	POPULATION	AREA SQ. MI.	POPULATION DENSITY
269691	KENTUCKY ALLTEL, INC. - LONDON	AGSTKYXA	100.00%	2,587.00	50.21	51.53
269691	KENTUCKY ALLTEL, INC. - LONDON	ARTNKYXA	0.00%	616.00	9.79	62.89
269691	KENTUCKY ALLTEL, INC. - LONDON	BBVLKYXA	0.02%	19,259.00	223.42	86.20
269691	KENTUCKY ALLTEL, INC. - LONDON	BESPKYXA	0.01%	8,125.00	187.88	32.64
269691	KENTUCKY ALLTEL, INC. - LONDON	BKVLKYXA	100.00%	2,971.00	78.38	37.91
269691	KENTUCKY ALLTEL, INC. - LONDON	BRHDKYXA	100.00%	4,523.00	60.73	74.48
269691	KENTUCKY ALLTEL, INC. - LONDON	BWVLKYXA	0.00%	4,880.00	70.32	69.40
269691	KENTUCKY ALLTEL, INC. - LONDON	BWVLKYXA	0.00%	4,880.00	70.32	69.40
269691	KENTUCKY ALLTEL, INC. - LONDON	CKSNKYXA	0.29%	8,369.00	184.10	45.46
269691	KENTUCKY ALLTEL, INC. - LONDON	CLCTKYXA	0.00%	5,178.00	40.96	126.42
269691	KENTUCKY ALLTEL, INC. - LONDON	CLMBKYXA	0.00%	582.00	59.27	9.82
269691	KENTUCKY ALLTEL, INC. - LONDON	CMLDKYXA	0.00%	5,353.00	97.28	55.02
269691	KENTUCKY ALLTEL, INC. - LONDON	CYVLKYXA	0.00%	6,876.00	233.72	28.56
269691	KENTUCKY ALLTEL, INC. - LONDON	DOVRKYXA	100.00%	641.00	15.46	41.46
269691	KENTUCKY ALLTEL, INC. - LONDON	EBNKKYXA	100.00%	6,539.00	117.31	55.74
269691	KENTUCKY ALLTEL, INC. - LONDON	EBRNKYAC	100.00%	7,363.00	92.41	79.68
269691	KENTUCKY ALLTEL, INC. - LONDON	EVR8KYXA	0.00%	7,459.00	96.70	73.98
269691	KENTUCKY ALLTEL, INC. - LONDON	FBSHKYXA	100.00%	2,640.00	83.64	31.58
269691	KENTUCKY ALLTEL, INC. - LONDON	FBSHKYXA	0.00%	5,998.00	138.52	43.97
269691	KENTUCKY ALLTEL, INC. - LONDON	FRNLKYXA	100.00%	1,361.00	45.85	29.69
269691	KENTUCKY ALLTEL, INC. - LONDON	GMTWKYXA	100.00%	927.00	25.18	36.82
269691	KENTUCKY ALLTEL, INC. - LONDON	IRVNRKYXA	0.00%	15,468.00	293.23	60.49
269691	KENTUCKY ALLTEL, INC. - LONDON	JHVLRKYXA	100.00%	1,876.00	54.97	34.13
269691	KENTUCKY ALLTEL, INC. - LONDON	JNKNKYXA	0.00%	4,115.00	37.69	107.91
269691	KENTUCKY ALLTEL, INC. - LONDON	LDNDKYXA	100.00%	37,429.00	308.09	121.49
269691	KENTUCKY ALLTEL, INC. - LONDON	LYTNKYXA	100.00%	3,389.00	135.18	25.07
269691	KENTUCKY ALLTEL, INC. - LONDON	LWGMKYXA	100.00%	1,499.00	41.70	35.94
269691	KENTUCKY ALLTEL, INC. - LONDON	MLBNKYXA	0.00%	954.00	39.38	24.15
269691	KENTUCKY ALLTEL, INC. - LONDON	MMCVKYXA	0.01%	13.00	31.58	0.41
269691	KENTUCKY ALLTEL, INC. - LONDON	MNCHKYXA	0.04%	17,734.00	225.58	78.62
269691	KENTUCKY ALLTEL, INC. - LONDON	MTOLKYXA	100.00%	2,309.00	99.85	23.12
269691	KENTUCKY ALLTEL, INC. - LONDON	MTVRKYAI	100.00%	8,639.00	114.39	75.52
269691	KENTUCKY ALLTEL, INC. - LONDON	MYLCKYXA	100.00%	1,621.00	57.47	28.21
269691	KENTUCKY ALLTEL, INC. - LONDON	ONBRKYXA	0.00%	4,787.00	281.48	28.69
269691	KENTUCKY ALLTEL, INC. - LONDON	PRGYKYXA	58.07%	2,708.00	55.07	49.17
269691	KENTUCKY ALLTEL, INC. - LONDON	SCHLKYXA	100.00%	7,257.00	109.59	66.22
269691	KENTUCKY ALLTEL, INC. - LONDON	SMOVKYXA	0.00%	1,894.00	87.12	49.40
269691	KENTUCKY ALLTEL, INC. - LONDON	SMLDKYXA	0.00%	3,375.00	112.93	29.89
269691	KENTUCKY ALLTEL, INC. - LONDON	SOVLKYXA	100.00%	2,714.00	99.08	27.39
269691	KENTUCKY ALLTEL, INC. - LONDON	UNTWKYXA	0.00%	1,865.00	58.98	31.62
269691	KENTUCKY ALLTEL, INC. - LONDON	WASHKYXA	100.00%	3,559.00	53.22	66.87
269691	KENTUCKY ALLTEL, INC. - LONDON	WHLLKYXA	100.00%	2,328.00	120.61	19.30
Wire Centers In Which ACC Did Not Seek Designation				127,409.00	2,523.37	50.49
Wire Centers In Which ACC Was Granted ETC Designation				102,172.00	1,763.30	57.94

Exhibit D

Kentucky PSC's September 21, 2005 Order Clarifying Redefinition of the Service Area Requirement

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF AMERICAN CELLULAR)	
CORPORATION FOR DESIGNATION AS)	
AN ELIGIBLE TELECOMMUNICATIONS)	CASE NO. 2005-00130
CARRIER PURSUANT TO SECTION 214(e))	
OF THE TELECOMMUNICATIONS ACT)	

O R D E R

On September 6, 2005, American Cellular Corporation ("ACC") filed a petition for rehearing or clarification of the Commission's Order in this matter dated August 15, 2005. At issue is how the Commission came to the conclusion to redefine the study area of Kentucky ALLTEL, Inc.'s London service area. ACC agrees with the Commission's determination to redefine the study area but requests clarification of rationale. ACC believes that the Commission must make a finding or conclusion addressing three factors. The Commission herein will grant the motion for clarification and address the matters raised by ACC.

For purposes of federal universal service obligations, a rural telephone company's study area is presumed to be its service area unless and until the Federal Communications Commission ("FCC") and state commission cooperatively establish a different service area definition for such company after considering the Federal-State Joint Board on Universal Service's ("Joint Board") service area recommendations.¹ Therefore, if a state commission proposes to define a rural telephone company study

¹ 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b).

area as something less than the company's entire service area, the state commission must consider and make findings with respect to each of the three Joint Board factors discussed below.

The first factor to consider is whether redefinition of the study area will present any risk of creamskimming. ACC is not intentionally creamskimming. ACC seeks to be designated within its entire FCC-licensed service area. It has not picked only certain areas within its licensed service area.

Also redefinition of the study area will not produce the unintended effects of creamskimming. The risk of unintentional creamskimming has been virtually eliminated by the FCC's implementation of the disaggregation mechanisms set forth in 47 C.F.R. § 54.315. Rural telephone companies have the option to disaggregate federal universal service support to higher cost portions of their study areas. Kentucky ALLTEL has elected to forgo disaggregation within its study area.

The FCC also endorsed conducting a population density analysis as a proxy to assess the risk of unintended creamskimming. A population density analysis compares the population density of the wire centers where the ETC designation is requested to the wire centers where the ETC designation is not requested. ACC completed a population density survey comparing the two areas, which shows that the area in which it seeks designation contains 57.94 persons per square mile and the area in which it does not seek designation contains 50.49 persons per square mile. The difference in these two results does not present any risk of unintentional creamskimming.

The second Joint Board factor that must be considered is whether redefinition will impact the regulatory status of the rural telephone company under the

Telecommunications Act of 1996. There is nothing that would affect the regulatory treatment of Kentucky ALLTEL. Also, the FCC has made the determination that redefinition of the study area does not affect embedded costs of the company or the amount of universal service support that it receives.²

The third Joint Board factor to be considered is whether any administrative burdens will result from the redefinition of the service area. The FCC confirmed in the Virginia Cellular, LLC order the redefinition of the study area does not affect the calculation of support or create any additional burdens for the rural telephone company.³

IT IS THEREFORE ORDERED that:

1. ACC's motion for clarification of the August 15, 2005 Order is granted.
2. Redefinition of the study area of Kentucky ALLTEL to permit ACC's designation as a competitive ETC poses no risk of creamskimming.
3. Redefinition of the study area of Kentucky ALLTEL to permit ACC's designation as a competitive ETC will not affect Kentucky ALLTEL's regulatory status under the Telecommunications Act of 1996.
4. Redefinition of the study area of Kentucky ALLTEL to permit ACC's designation as a competitive ETC will not create any additional administrative burdens.

² In the matter of Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, Memorandum and Opinion and Order, FCC 03-338 Paragraph 41 and 43, released January 23, 2004.

³ Id. at Paragraph 44.

Done at Frankfort, Kentucky, this 21st day of September, 2005 .

By the Commission

ATTEST:



Executive Director

Case No. 2005-00130